

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

July 2, 2009

No. 07-40752
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

SANTIAGO CASTILLO-LUCIO also known as, Edgar Santiago Castillo-Lucio

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:07-cr-47

ON REMAND FROM THE SUPREME COURT

Before JOLLY, HIGGINBOTHAM, and PRADO, Circuit Judges.

PER CURIAM:*

In 2007, Defendant-Appellant Santiago Castillo-Lucio pleaded guilty to the charge of being found unlawfully present within the United States after removal subsequent to an aggravated felony conviction. After sentencing, Castillo-Lucio appealed his sentence, specifically the eight-level aggravated felony enhancement based on an earlier conviction for unauthorized use of a motor

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

vehicle under Texas law. Recognizing that circuit precedent foreclosed his argument, Castillo-Lucio moved for summary affirmance so that he could seek review in the Supreme Court. We granted the motion and affirmed the district court. *See United States v. Castillo-Lucio*, 256 F. App'x 720 (5th Cir. 2007) (per curiam). After he petitioned for a writ of certiorari, the Supreme Court vacated our decision and remanded the case for consideration in light of *Begay v. United States*, 128 S. Ct. 1581 (2008), and *Chambers v. United States*, 129 S. Ct. 687 (2009). *See Castillo-Lucio v. United States*, 129 S. Ct. 993 (2009) (mem.). As the parties now agree, the district court committed a procedural error in sentencing Castillo-Lucio, and we must therefore vacate the sentence and remand for resentencing. *See United States v. Armendariz-Moreno*, ___ F.3d ___, 2009 WL 1653551, at *1 (5th Cir. 2009).

On remand, the district court may also consider Castillo-Lucio's request for reformation of the judgment.

SENTENCE VACATED and REMANDED.